

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

PROBATION OFFICE

JAMES W. DUCKETT, JR.

CHIEF PROBATION OFFICER

P.O. BOX 809  
COLUMBIA, SC 29202  
803-253-3330  
FAX 803-765-5110

DIVISIONAL OFFICES:

P.O. BOX 809  
COLUMBIA, SC 29202  
803-765-5441

P.O. BOX 894  
CHARLESTON, SC 29402  
803-724-4332  
FAX 803-724-4245

P.O. BOX 490  
FLORENCE, SC 29503  
803-669-5254

P.O. BOX 10329  
GREENVILLE, SC 29603  
803-235-8527  
FAX 803-242-4521

March 7, 1991

Mr. Michael Courlander  
Communications Director  
U.S. Sentencing Commission  
1331 Pennsylvania Avenue, NW, Suite 1400  
Washington, DC 20004

Re: Proposed Guideline Amendments for 1991

Dear Mr. Courlander:

On behalf of the District of South Carolina U.S. Probation Office, I submit the following comments pertaining to certain 1991 proposed amendments.

As to Amendments 7(A) and (B): I recommend that both of these proposals be submitted, although we are seeing, in many instances, the dismissal of the underlying offense in 924(c) cases. Nevertheless, many robberies in this district involve the defendant simply going in and demanding money without brandishing a weapon. However, trauma to the victims is extremely high because it is assumed that the defendant has a weapon or is willing to use some other type of force. Certainly the brandishing of a weapon has a tremendous effect on the victims involved.

Under proposed Amendment 7(C), where the defendant's level is enhanced due to multiple instances of robbery whether convicted or not, I would recommend the change. As it stands now, a judge can always depart to account for other robberies, but I see a great potential for disparity around the country due to inconsistency in departing. I am currently on a task force to revise the presentence report format, and we debated at length as to where additional, unconvicted robberies should go in the presentence because they are not part of relevant conduct. It was my position that additional, unconvicted robberies should go under the offense conduct section, although unaccounted for in the guidelines. Judges have always considered the entire spectrum of behavior in sentencing. Also, there seems to be an inconsistency where the guidelines account for unconvicted additional checks, cars, etc. but not robberies.

As to proposed Amendment 11, I think that too much reliance is placed upon drug quantity for less culpable offenders. However, lowering their exposure may make them less inclined to provide substantial assistance. Nevertheless, I do think it would be proper to lower their exposure. I would suggest that in drug cases the Commission explore the possibility of level caps for those persons determined to be minor and minimal participants. That is, if the

March 7, 1991

Page 2

---

defendant was a minimal participant, as defined in Application Note No. 2 under 3B1.2, Mitigating Role, but would otherwise be in Level 42 because he saw the entire ship be unloaded waiting for his small portion, I would suggest that his offense level be capped at a significantly lower point. If this is not feasible, I would suggest the possibility of an overall cap for persons in that low category. I think the question is whether a minimal role player is more culpable in a large drug case than he is in a small drug case.

Pertaining to Amendment 16, we have not had enough experience with these chemicals for me to properly comment on this change.

I am in wholehearted agreement with proposed Amendment 22. This will cut down on some confusion as to which guideline applies and will also shorten the section.

Proposed Amendment 30, Option 3, is a needed change. The current related case rules create disparity in this area. I think that this option is fairest because it covers all related cases. This will eliminate much of the disparity that we see pertaining to inadequacy of criminal history.

Pertaining to Amendment 31, I would think that there will be more people falling into the new Criminal History Category VII, particularly in view of Amendment 30. As for the options, I would submit that as the criminal history points increase, culpability increases also. I don't think that a more culpable offender should find it more difficult for his range to be increased than a less culpable one. Therefore, I recommend Option 3 because it also suggests departure for a more severe criminal history. I think a career offender should have a floor of VI with those qualifying for VII doing so.

Amendment 33 addresses a thorny issue. It is almost impossible to correctly assess how much time a person will serve on an undischarged term of imprisonment when he comes into federal court for sentencing. Therefore, there will always be some disparity as far as term of imprisonment is concerned. Many probation officers find the current guideline confusing because they seldom deal with the multi-count rules. Nevertheless, in looking at the proposed amendments, I feel that the amendment is worthwhile with Option 2.

I hope that this information will be of use to you. Thank you for considering my suggestions.

Sincerely,



Thomas N. Whiteside  
Deputy Chief U.S. Probation Officer

TNW/bl

cc CUSPO James W. Duckett, Jr.